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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Second Amended
Accusation Against:

Case No. 2012-602

14 **JOHN CHRISTOPHER PAYNE**
15 **P.O. Box 1786**
Fallbrook, CA 92088
16 **Registered Nurse License No. 613646**

SECOND AMENDED ACCUSATION

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Second Amended
22 Accusation solely in her official capacity as the Executive Officer of the Board of Registered
23 Nursing, Department of Consumer Affairs.

24 2. On or about February 13, 2003, the Board of Registered Nursing issued
25 Registered Nurse License Number 613646 to John Christopher Payne (Respondent). The
26 Registered Nurse License was in full force and effect at all times relevant to the charges brought
27 herein and will expire on April 30, 2014, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480;
- or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be

1 conclusive evidence of the fact that the conviction occurred, but only of that fact,
2 and the board may inquire into the circumstances surrounding the commission of
3 the crime in order to fix the degree of discipline or to determine if the conviction
is substantially related to the qualifications, functions, and duties of the licensee in
question.

4 As used in this section, "license" includes "certificate," "permit,"
5 "authority," and "registration."

6 9. Section 2761 of the Code states:

7 The board may take disciplinary action against a certified or licensed
8 nurse or deny an application for a certificate or license for any of the following:

9 (a) Unprofessional conduct, which includes, but is not limited to, the
10 following:

11

12 (f) Conviction of a felony or of any offense substantially related to the
13 qualifications, functions, and duties of a registered nurse, in which event the
record of the conviction shall be conclusive evidence thereof.

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15 10. Section 2762 of the Code states:

16 In addition to other acts constituting unprofessional conduct within the
17 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
for a person licensed under this chapter to do any of the following:

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19 (b) Use any controlled substance as defined in Division 10 (commencing
20 with Section 11000) of the Health and Safety Code, or any dangerous drug or
dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
in a manner dangerous or injurious to himself or herself, any other person, or the
public or to the extent that such use impairs his or her ability to conduct with safety
to the public the practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription,
22 consumption, or self-administration of any of the substances described in
23 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
24 record pertaining to, the substances described in subdivision (a) of this section, in
which event the record of the conviction is conclusive evidence thereof.

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26 11. Section 2765 of the Code states:

27 A plea or verdict of guilty or a conviction following a plea of *nolo*
28 *contendere* made to a charge substantially related to the qualifications, functions
and duties of a registered nurse is deemed to be a conviction within the meaning

1 of this article. The board may order the license or certificate suspended or
2 revoked, or may decline to issue a license or certificate, when the time for appeal
3 has elapsed, or the judgment of conviction has been affirmed on appeal or when
4 an order granting probation is made suspending the imposition of sentence,
5 irrespective of a subsequent order under the provisions of Section 1203.4 of the
6 Penal Code allowing such person to withdraw his or her plea of guilty and to enter
7 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
8 accusation, information or indictment.

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

- (a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.
- (b) Failure to comply with any mandatory reporting requirements.
- (c) Theft, dishonesty, fraud, or deceit.
- (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

13. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

1 **COST RECOVERY**

2 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request
3 the administrative law judge to direct a licensee found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(August 4, 2011 Criminal Conviction for DUI on August 2, 2010)**

8 15. Respondent has subjected his registered nurse license to disciplinary action under
9 Code sections 490 and 2761, subdivision (f), in that he was convicted of crimes that are
10 substantially related to the qualifications, functions, and duties of a registered nurse. The
11 circumstances are as follows:

12 a. On or about July 7, 2011, in a criminal proceeding entitled *The People of*
13 *the State of California v. John Christopher Payne*, in San Diego County Superior Court North
14 County Division, case number SCN290506, Respondent was convicted on his plea of guilty of
15 violating Vehicle Code (VC) section 23153, subdivision (a), driving under the influence (DUI)
16 and causing bodily injury to another person, a felony. Respondent admitted that his Blood
17 Alcohol Concentration (BAC) was .15% or more while he was driving. Respondent's high BAC
18 supported the Court's imposition of a sentencing enhancement pursuant to VC section 23578. In
19 fact, Respondent's BAC was .21% at or about the time of his arrest. Additional charges for
20 violation of VC section 23153, subdivision (b), driving with a measurable blood alcohol and
21 causing bodily injury to another person, a felony, and sentencing enhancement pursuant to VC
22 section 23558, causing bodily injury or death to more than one victim while driving in violation
23 VC section 23153 subdivisions (a) and (b), were dismissed as a result of a plea bargain.

24 b. As a result of the conviction, on or about August 4, 2011, Respondent was
25 sentenced to five years formal probation under the following terms and conditions: serve 185
26 days in County Jail, less credit for 2 days served, and 72 hours in Vista Detention Center, with
27 180 days stayed pending successful completion of probation; complete up to 20 days of service
28 in a Public Service Program; complete a substance abuse counseling program, a DUI Victim

1 Impact Panel presentation, and a 9-month First Conviction Program; pay fines and fees of
2 \$2,139.00; pay restitution to two victims in an amount to be determined; and comply with the
3 terms of standard DUI probation.

4 c. The facts that led to the conviction are that on or about August 2, 2010,
5 Respondent rear-ended another vehicle causing bodily injuries to the other driver and the
6 passenger in the City of Oceanside, California. Oceanside Police Department Traffic Patrol
7 Officers arrived at the scene of the collision and interviewed Respondent. While interviewing
8 Respondent, an Officer observed the following: Respondent's breath and person smelled of
9 alcohol; and Respondent also had slurred speech, an unsteady gait, and poor physical
10 coordination. Respondent admitted that he drank two shots of Tequila prior to driving and that he
11 did not know where he was or when he started or stopped drinking. Prior to Respondent's arrest,
12 he completed a Preliminary Alcohol Screening Test that indicated his BAC was approximately
13 .190% and .189%. After Respondent's arrest, he provided a blood sample that was analyzed for
14 BAC and indicated that it was .21%.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

17 16. Respondent has subjected his registered nurse license to disciplinary action under
18 section 2762, subdivision (b), of the Code, in that on or about August 2, 2010, as described in
19 paragraph 15, above, Respondent used alcoholic beverages to an extent or in a manner that was
20 dangerous and injurious to himself and to others when he drove a car while impaired by a
21 significantly high BAC and crashed his car into the back of the car that was being driven in front
22 of him.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct - Conviction of Alcohol Related Criminal Offenses)**

25 17. Respondent has subjected his registered nurse license to disciplinary action under
26 Code section 2762, subdivision (c), in that on or about August 4, 2011, as described in paragraph
27 15, above, Respondent was convicted of a criminal offense involving the consumption of
28 alcohol.

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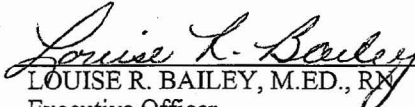
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1 2. Ordering John Christopher Payne to pay the Board of Registered Nursing the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
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8 DATED: September 27, 2012


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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